

REMARKS

Claims 1-3, 6-15, 17-19, and 24-30 are pending and stand rejected as anticipated or rendered obvious in view of Mizutani '160. The rejection is based on the premise that, although Mizutani '160 does not teach a seal strength for sealed portions 25, or an opening noise level of less than about 60 db, such properties are inherent to the device of Mizutani because the packaging material used in the Mizutani device is substantially identical to the claimed wrapper material of the present application. The burden to prove otherwise has been placed upon the applicant to show that the prior art packaging material taught by Mizutani does not yield the claimed sealing strength or decibel level.

Each of independent claims 1, 17, and 25 calls for an individually wrapped absorbent article package to include a wrapper material folded into a pouch. A seal is provided in the wrapper material so that the user gains access to the absorbent article by opening the seal. The wrapper material includes a nonwoven material in at least a region along the seal such that the seal is formed completely of the nonwoven material. Each of claims 1, 17, and 25 further calls for the seal to have a seal strength of between about 20 grams-force to about 60 grams-force. Independent claim 1 additionally calls for the seal to have an opening noise level of less than about 60 db when measured according to the procedure described in the application. Mizutani '160 teaches that the fused portions 25 of the packaging material 10 are unsealed at a decibel level of 55 db at a different distance as set forth in the claim test method. In addition, Mizutani '160 is completely silent as to the seal strength of portions 25. The Office Action indicates that the burden has shifted to the applicant because the

reference discloses the limitations of the claims except for a property or function.

However, it is respectfully submitted that the Office Action “must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art

The fact that a certain result or characteristics may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. To establish inherency, the extrinsic evidence “must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.” See MPEP § 2112.

It is respectfully submitted that the Office Action does not set forth a basis in fact or technical reasoning that reasonably shows that the claimed properties of seal strength and noise level are inherent to the packaging configuration of Mizutani ‘160. Even assuming, arguendo, that the noise level of Mizutani is comparable to the claimed noise level set forth in claim 1, such characteristic does not mean that the two seals necessarily have the same seal strength. It cannot be reasonably asserted that seal strength is a proportional function of opening noise level. Seal strength may be a function of any number of interrelated variables, including type of material, rigidity of the material, surface area of the sealed portions, type of seal, and so forth. It should be readily appreciated that identical materials may be sealed in various manners that generate substantially different opening noise levels. The assertion that because the packaging configuration of Mizutani ‘160 may generate the same opening noise level as

described in the present application, it necessarily follows that the materials also have the same seal strength is not well founded. In fact, at various places throughout the specification of Mizutani '160, the reference acknowledges that the unsealing noise level is a function of the material, and not a function of the seal. For example, at column 3, lines 23 through 27, the reference states:

Because the packing member is made of the nonwoven fabrics, moreover, zipping or rustling sound is hardly caused at the unsealing time. By forming the plurality of heat-fused portions, moreover, the breathability resistance can be easily enhanced.

At column 5, lines 27 through 30, the reference states:

The packaging member 10 is formed of a composite nonwoven fabric. This packaging member 10 is made softer than a synthetic resin film and hardly causes zipping sound (i.e., rustling sound) when unsealed.

At column 7, lines 9 through 15, the reference states:

Since the packaging member 10 is constricted of the three layers of nonwoven fabrics and is fused by pressing and heating them at the partially heat-fused portions 15, as shown in Fig. 3, the overall rigidity of the packaging member 10 can be kept at a proper level for causing no rustling sound unlike films and for being prevented from being curled when unsealed.

Thus, Mizutani '160 attributes the low noise level at unsealing to characteristics of the nonwoven material, and not as a function of seal strength.

Accordingly, it is respectfully submitted that the Office Action does not show a reasonable basis in fact or technical reasoning to assert that the claimed seal strength is inherent to the package configuration of Mizutani '160 because of the similar noise level. The seal strength set forth in the present independent claims does not necessarily flow from the fact that nonwoven materials produce a lower noise level at unsealing. As discussed above, inherency may not be established by probabilities or

possibilities. The mere fact that a thing may result from a given set of circumstances is not sufficient to establish inherency.

Accordingly, it is respectfully submitted that each of the independent claims patentably distinguishes over Mizutani '160 alone or in combination with any other reference of record, and are allowable. The respective dependent claims only further patentably define the combination of elements set forth in their respective independent claims, and are also allowable. With the present Amendment, it is respectfully submitted that all pending claims are allowable and the application is in condition for allowance. Favorable action thereon is respectfully requested. The Examiner is encouraged to contact the undersigned at his convenience should he have any questions regarding this matter or require any additional information.

If any fee or extension of time is required to obtain entry of this Amendment, the undersigned hereby petitions the Commissioner to grant any necessary time extension and authorizes charging Deposit Account No. 04-1403 for any such fee not submitted herewith.

Respectfully submitted,

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